SUPREME COURT, U.S.
MAR - 2 2015
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In The
Supreme Court of the United States

OBERGEFELL, JAMES, et al.,

Petitioners,

v.

HODGES, RICHARD, et al.,

Respondents.

TANCO, VALERIA, et al.,

Petitioners,

v.

HASLAM, GOV. OF TN, et al.,

Respondents.

DEBOER, APRIL, et al.,

Petitioners,

v.

SNYDER, GOV. OF MI, et al.,

Respondents.

BOURKE, GREGORY, et al.,

Petitioners,

v.

BESHEAR, GOV. OF KY, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF LANGLEY HILL FRIENDS MEETING; RICHMOND, VA FRIENDS MEETING; AND ANN ARBOR FRIENDS MEETING, ALL PART OF THE RELIGIOUS SOCIETY OF FRIENDS AS *AMICI CURIAE* SUPPORTING PETITIONERS AND REVERSAL

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QUESTION PRESENTED

Does the Constitution require a state to license a marriage between two people of the same gender when the prohibition thereof creates a burden on the free exercise of the religious beliefs of the Religious Society of Friends?

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STATEMENT OF INTEREST

Richmond Friends Meeting is a congregation of the Religious Society of Friends of approximately 510 members and attenders located in Richmond, Va., founded in 1795.[1]

Langley Hill Friends Meeting is a congregation of the Religious Society of Friends of approximately 249 members and attenders located in Langley Hill, Va., founded in 1961.

Ann Arbor Friends Meeting is a congregation of the Religious Society of Friends of approximately 125 members and attenders located in Ann Arbor, Mi., founded in 1936.

As described more fully below, each of these Meetings and their members have been struggling to accommodate their religious beliefs regarding equality and integrity in deciding what actions they should take with regard to members who wish to be married, some of whom are mixed gender couples and others who are same gender couples, in light of the bans in some states on same gender marriages. They are filing this brief to inform the Court that laws prohibiting same gender marriages severely impact the

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[1] Pursuant to Rules 37.3 and 37.6, all parties have consented to the filing of this brief. *Amici* certify that no counsel for a party authored this brief in whole or in part, no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and no person other than the *amici* or their counsel made such a monetary contribution.

religious practices of Friends because they collide with the fundamental beliefs held by Friends of equality and integrity. If the state ban is reinstated or upheld, these Meetings will not be able to marry their members pursuant to their religious practices.

PRELIMINARY STATEMENT

The Religious Society of Friends (Quakers) came to the shores of America more than 400 years ago, seeking freedom to practice their faith without obstruction by either the government or their neighbors. Although they often met fierce resistance such as the law banning Quakers in Virginia (enacted March 13, 1660, Hening, I, 532-533), ultimately Friends and other religious groups found the Americas to be a place of religious tolerance. Freedom of religion has been fundamental to our land, as found in the First Amendment of the U.S. Constitution.

For many Friends a foundational belief[2] is that there is "that of God in everyone." Friends work together to find God's will, waiting for a Sense of the

[2] This summary of Friends' beliefs is an oversimplification of a complex web of beliefs among Friends. As with many faiths there are differences and nuances among Friends. For the purpose of this brief, however, this is an accurate, if abbreviated, statement of the Friends represented here and of many thousands more. A more detailed discussion of Friends' beliefs can be found in Howard Brinton, *Guide to Quaker Practice* (1993) and Lloyd Lee Wilson, *Essays on the Quaker Vision of Gospel Order* (2002).

Meeting (something akin to, but not the same as, consensus), many Meetings taking years to come to clearness. Michael J. Sheeran, *Beyond Majority Rule* (1983).

Quakers have no written creed but have always had "testimonies" shaped over the centuries by continuing revelation to guide them in a manner not unlike the continuing unfolding of our understanding of the U.S. Constitution in general and the Bill of Rights in particular. *See* Langley Hill Friends Meeting, *Quaker Values and Testimonies*, http://langleyhillquakers.org/quaker_values_and_testimonies.aspx. Following of these testimonies has often resulted in Friends being out of step with their neighbors. The most well-known of the testimonies is the Peace Testimony which is why most Friends refuse to participate in war in any form and why many are vegetarians. The testimony of simplicity resulted in the plain dress that was common among Friends until the early-twentieth century. The testimony of integrity made Friends merchants with whom people wanted to trade knowing that they would give a fair price. It is also the reason Friends would not swear oaths, a practice recognized by their affirmations of truth as being legally equivalent to the otherwise required oaths. The testimony of equality led Friends in the United States to reject slavery completely by 1784. Thomas Hamm, *Quakers in America* (2006); Howard Brinton, *Friends for 350 Years* (1993).

These latter two testimonies – integrity and equality – are what lead Langley Hill; Richmond, Va.; and Ann Arbor Friends Meetings to file this brief.

Based on their fundamental belief that there is that of God in everyone, Friends have worked to be a welcoming faith community that treats everyone fairly and as equals. As part of that challenge, some Quakers began to welcome openly gay and lesbian Friends in the early 1970s. The welcoming of gay, lesbian, bisexual, and transgender attenders and members resulted in a struggle over the meaning of marriage among Friends.

In the 1980's some Meetings began holding marriages of same gender couples under their care and some other Meetings held same gender unions in the manner of Friends' weddings.[3] *This may seem like semantics, but it is this very word choice which is why there is the struggle in the courts today.* The word "marriage" has both legal and religious ramifications. It is this difference that led more Friends to conclude that even the practice of taking same gender unions under their care rather than marriages was unequal and therefore inadequate. On the other hand, many Friends Meetings which took the marriage of same gender couples under their care without

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[3] Most Friends Meetings do not have ministers (all though most Friends' Churches do). Marriage "in the manner of Friends" or "under the care of" these Meetings consist of the principals exchanging vows "before God and these, our Friends" and subsequently signing a copy of their vows with all of the people who attended the wedding signing it as witnesses. These Meetings usually work out a system with local civil authorities whereby there are specific members of the Meeting who sign the marriage license upon completion of the marriage.

legal recognition found that doing so was also an inadequate solution to inequality, because unlike the marriages of mixed gender couples, the marriage of same gender couples could not be legally recognized. Many Friends Meetings began to advocate for the legal recognition of the right to marry all of their members in the manner of Friends without regard to gender of the participants. *See* Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns (FLGBTQC), *Marriage Minutes*, http://flgbtqc.quaker.org/marriageminutes.html.

Richmond Friends Meeting, after years of consideration, concluded that that they would refuse to perform the civil aspect of marriages of any members until they could legally perform civil marriages for all in order to be true to their witnesses of integrity and equality. Richmond Meeting continued to hold under its care the marriages of its members as requested but without civil officiants as an effort to be true to its testimonies of integrity and equality. But this too, was inadequate, because it burdened both the mixed gender and same gender couples who are members of Richmond Meeting, each of whom was deprived of their right to have a marriage entered into within their own faith community legally recognized. App. 5. Members of Langley Hill Friends Meeting which took marriages under its care regardless of the gender of the couples felt the heavy weight on their hearts of not being able to be true to their testimonies of integrity and equally because of lack of legal recognition for some of those marriages and minuted this burden

both in 1991 and 2014. App. 2. If the state ban on same gender marriage is reinstated or upheld, these Meetings once again will not be able to marry their members pursuant to their religious practices.

In 2015, Ann Arbor Friends Meeting reaffirmed its long time practice of taking the marriages of same gender couples under its care the same as mixed gender couples while being deeply troubled that the marriage of the same gender couples were not legally recognized, originally minuted in 1992. One mixed gender couple married under the care of Ann Arbor Friends Meeting declined to apply for a marriage license because their religious beliefs did not permit them to do so while same gender couples were denied a marriage license by the civil authorities. App. 5.

Laws barring recognition of same gender marriages create a real burden on the religious freedom of same gender couples of the Religious Society of Friends who are unable to celebrate their religious and legal right to be married within their faith community if these laws were to stand. The laws create an unintended but nevertheless real burden on the religious freedom of mixed gender couples who are members of Richmond Meeting who would be unable to celebrate their religious and legal right to be married within their faith community if these laws were to be reinstated. These laws created an unintended but nevertheless real burden on the religious freedom of mixed couples who are members of Meetings who found themselves individually as a matter of integrity unwilling to celebrate their religious and

legal right to be married within their faith community. The laws which prohibit such marriages create an impermissible burden on the Friends Meetings that must choose between some members' right to be legally married in their faith community or creating disparate classes of members in violation of the clear testimonies of integrity and equality. Finally, these laws create an impermissible burden on all members of the Meetings which are forced to choose between these courses, both of which violate their faith.

SUMMARY OF ARGUMENT

Marriage has long been recognized as a fundamental civil right. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Loving v. Virginia*, 388 U.S. 1 (1967).

But marriage has also been recognized as a central component of most faith communities. The fundamental legal right to marriage and the centrality of marriage to faith communities overlap in the statutory recognition of marriages solemnized in any religious society in conformity with the rules of its church. It is this fundamental right to recognition of marriages solemnized in conformity with the rules of their faith community that Friends seek to protect.

The Religious Society of Friends' testimonies of integrity and equality bring Friends to this Court seeking protection for their religious freedom to practice their faith in a manner consistent with their beliefs. The ruling of the Sixth Circuit has made the

faithful practice of Friends' beliefs impossible for many as it pertains to marriages taken under their care. These Friends' belief in equality requires them to treat same gender couples equally in taking their marriages under the care of the meeting. These laws forbid recognition of some marriages Friends' faith dictates they take under their care.

Many Friends throughout the country have concluded that to be consistent with their religious beliefs they must participate in obtaining legal recognition for marriages for same gender couples as well as for mixed gender couples. Other Friends have concluded that they cannot be faithful and seek marriage under the care of their Meeting until all couples are entitled to legal recognition for their marriages. In order to be true to their beliefs in equality, Friends need the ability to obtain legal recognition of the marriages under their care regardless of the gender of the members of the couples. Therefore, Friends ask that this burden placed by the states on their beliefs be removed.

ARGUMENT

STATE LAWS WHICH PROHIBIT SAME GENDER MARRIAGES UNDULY BURDEN THE RELIGIOUS FREEDOM OF MEETINGS AND MEMBERS OF THE RELIGIOUS SOCIETY OF FRIENDS.

Beyond being a civil right, marriage is also part of Religious Freedom. Every state in the union provides

for members of the clergy or religious communities to act as officiants in marriage ceremonies. Perry Dane, *A Holy Secular Institution*, 58 Emory L.J. 1123, 1137 (2008). The Court held in *Turner v. Safley* that one of the reasons that "important attributes of marriage remain," even taking into account "the limitations imposed by prison life" was that "many religions recognize marriage as having spiritual significance; for some inmates and their spouses, therefore, the commitment of marriage may be an exercise of religious faith as well as an expression of personal dedication." 482 U.S. 78, 95-96 (1987). It is this exercise of religious faith that is being thwarted by laws banning recognition of same gender marriages.

Marriage is a foundational right that implicates many other constitutional protections. In *U.S. v. Windsor*, 133 S.Ct. 2675, 570 U.S. ___ (2013), Windsor, whose marriage was recognized by her home state of New York, was denied recognition of that marriage when she sought a federal tax exemption on the estate of her deceased spouse. The Court struck down the Defense of Marriage Act ("DOMA"), 1 U.S.C. § 7 and 28 U.S.C. § 1738C (1996) in part on due process and equal protection grounds. "By seeking to injure the very class New York seeks to protect, DOMA violates basic due process and equal protection principles applicable to the Federal Government." *Id.* at 2693.

It is this conjunction of religious freedom and the fundamental right of marriage with the multiple rights and privileges afforded married couples that

require that the laws which prohibit same gender marriages fail.

Richmond Friends Meeting concluded that rather than perform the service of legal officiant for only some marriages taken under their care while same gender marriages were unrecognized in Virginia, they would be a legal officiant for no one. Until the denial of certiorari in *Bostic v. Shaefer*, 760 F.3d 352 (4th Cir. 2014), *cert. denied, Rainey v. Bostic*, 135 S.Ct. 308 (2014), none of the members of the Richmond Friends Meeting community – same gender couples or mixed gender couples – were able to have legal recognition of their marriage taken under the care of their religious community. Although, for the moment, Richmond can take under its care any couple within its community secure in the knowledge that the marriage will be legally recognized, the upholding of the Sixth Circuit opinion in *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014), *pet. cert. granted*, 83 USLW 3315 would put Richmond Friends Meeting back in the untenable position of once again having none of the marriages held under its care being legally recognized.

Some Meetings, which felt just as strongly about the right to marry all of the members of their community in the manner of Friends, came to a different and equally unhappy solution. Some Meetings have taken same gender unions under their care as part of their practice. Others have taken marriages of same gender couples under their care without seeking legal recognition of those marriages. Others have taken

marriages of same gender and mixed gender couples under their care without seeking legal recognition of any of those marriages. Each of these Meetings recognizes that this was not a fully equal recognition of the relationships established under God in the Meeting. The refusal of state and federal governments to recognize all marriages taken under the care of a Meeting requires Meetings and their members to violate their own beliefs in equality and integrity regardless of which decision they make about marriages within their faith communities.

The burdens placed on the faith of Meetings and individual members of those Meeting communities of the Religious Society of Friends require that the laws which prohibit same gender marriages fail.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request this Court to reverse the decision below.

Respectfully submitted,

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March 2, 2015

Ann Arbor Friends Meeting Minutes
Ann Arbor, Michigan

Minute February 16, 1992

The Meeting recognizes in the unique traditional manner of Friends that no official of the Meeting marries a couple, but that the Meeting witnesses and celebrates the vows of the couple to each other.

It is therefore the sense of the Meeting that Ann Arbor Friends Meeting provides a clearness and oversight process for couples in the Meeting, whether of different sex or the same sex. If it is so recommended by the clearness committee and approved by the meeting for business, the Meeting witnesses and celebrates the couple's commitment to each other, takes their relationship under its care, and gives its ongoing support. Couples have some latitude in the words they choose to use in their vows to each other; they may use the word marriage if they choose to do so. The Clerk or his/her representative signs appropriate legal documents certifying that the commitment has been witnessed after the manner of Friends.

Minute Feb. 15, 2015

A marriage under the care of Ann Arbor Friends Meeting ("AAFM") occurs during a called Meeting for Worship, during which the couple declare their vows to each other before God, witnessed by family and friends. It has been and will continue to be the practice of AAFM to perform marriages for same-gender couples.

In such instances, at the present time, the marriage would not be recognized by the State of Michigan. This does not affect the validity of the marriage in our eyes, but AAFM is deeply troubled that same-gender couples married by AAFM do not currently receive the legal rights conferred on heterosexual couples married under the care of AAFM. The disparate treatment by the State of Michigan cannot be reconciled with our core testimonies of integrity and equality, derived from our belief as Friends (Quakers) that there is that of God in every person. At least one heterosexual couple married under the care of AAFM has declined to apply for a marriage license because their Quaker religious beliefs did not permit them to do so while same-gender couples were denied a marriage license by the civil authorities. Accordingly, we support this Friend of the Court Brief.

Langley Hill Friends Meeting Minutes
Langley, Virginia

Minute 1991

We affirm that our belief in that of God in every person embraces all human beings, so that we welcome to meetings for worship, to fellowship and to consideration for membership all persons, without consideration of sexual orientation. The Meeting extends its loving care to all members and attenders. Some forms of this care include counseling and clearness committees for individuals, couples and families, and providing for marriages and commitment ceremonies in the manner of Friends.

Excerpt from Letter from Clerk of Committee on Oversight and Family Relations May 14, 2000

After reviewing the minute from Virginia Half-Years Meeting, we (the committee) believe that our minute is consistent with the first two clauses of their minute. During our deliberations at Langley Hill leading up to the adoption of the 1991 minute, we considered language committing to political action; this was not included in our final minute. (This letter reported that the final clause of Virginia Half-Years Minute was referred to Langley Hill Social Concerns Committee to see whether there is interest in supporting political efforts to make same-gender marriage legal in the Commonwealth of Virginia.)

Response to Query on Quaker Marriages 2010

Last fall, Baltimore Yearly Meeting's Ad Hoc Committee on Gender and Sexual Diversity Concerns asked monthly meetings to consider the following query, and invited responses (see query on p 24).

The Committee on Care and Clearness of Langley Hill Meeting has considered the query and we suggest the following response:

Langley Hill Meeting is sensitive to concerns of and for those couples whose marriages are not recognized by their civil jurisdiction. However we do not agree with the suggestion – implied by the query – that marriages under the care of the Meeting should have

only a religious component, and not a civil component.

A marriage under the care of Langley Hill Meeting occurs during a called Meeting for Worship, during which the couple declare their vows to each other before God, witnessed by family and friends. Three members of the Meeting are recognized by the Commonwealth of Virginia as Registered Celebrants; they are authorized to sign the state marriage license confirming that the marriage took place. Heterosexual couples may request the services of one of our Registered Celebrants.

Langley Hill Meeting has minuted our willingness to perform marriages (or commitment ceremonies) for same-gender couples. In such instances, at the present time, the couple would not have a marriage license from Virginia, and there would be no role for the Registered Celebrant. This would not affect the validity of the marriage in our eyes. We hope that the Commonwealth of Virginia will also come to recognize the validity of such a marriage for civil purposes.

Rather than restrict marriages under the care of Langley Hill Meeting to a religious component only, we prefer to continue to work to be able to also confirm the civil component for all couples.

Richmond Friends Meeting Minutes

Minute February 19, 1989

Richmond Friends Meeting extends its loving care and support to all individuals and couples in our Meeting community. A committed, loving relationship provides a framework within which spiritual growth can occur. Therefore, we affirm our willingness to hold a celebration of commitment under the care of the Meeting for same-gender couples at least one of whom is a member or active attender of Richmond Friends Meeting. This is evidence of our spiritual support of such a long-term relationship. The customary process for marriage outlined in *Faith and Practice* will be followed.

Excerpt from letter November 18, 1999

Richmond Monthly Meeting unites with Charlottesville Monthly Meeting regarding the minute from Virginia Half-Years Meeting on the same subject [to provide only spiritual support for marriage]. . . We indicated our unity with a minute to that effect at our monthly meeting for worship for business on the 18th of Seventh Month, 1999.